
Introduced by Senator EscutiaFebruary 21, 2003

An act to amend Section 3040 of the Civil Code, relating to health care liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 835, as introduced, Escutia. Health care liens.

Existing law provides that any lien asserted by specified entities for the recovery of money paid or payable to or on behalf of an enrollee or insured for medical services provided under a health care service plan contract or disability insurance policy may not exceed a specified amount. Existing law requires that the amount determined to be recoverable for services provided on a capitated basis equal 80% of the usual and customary charge, as specified.

This bill would clarify that the determination of this charge is the charge appearing on a statement or accounting of services.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3040 of the Civil Code is amended to
2 read:
3 3040. (a) No lien asserted by a licensee of the Department of
4 Managed Care or the Department of Insurance, and no lien of a
5 medical group or an independent practice association, to the extent
6 that it asserts or enforces a lien, for the recovery of money paid or
7 payable to or on behalf of an enrollee or insured for health care
8 services provided under a health care service plan contract or a



1 disability insurance policy, when the right of the licensee, medical
2 group, or independent practice association to assert that lien is
3 granted in a plan contract subject to the Knox-Keene Health Care
4 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
5 1340) of Division 2 of the Health and Safety Code) or a disability
6 insurance policy subject to the Insurance Code, may exceed the
7 sum of the reasonable costs actually paid by the licensee, medical
8 group, or independent practice association to perfect the lien and
9 one of the following:

10 (1) For health care services not provided on a capitated basis,
11 the amount actually paid by the licensee, medical group, or
12 independent practice association pursuant to that contract or
13 policy to any treating medical provider.

14 (2) For health care services provided on a capitated basis, the
15 amount equal to 80 percent of the usual and customary charge
16 *appearing on a statement or accounting of services* for the same
17 services by medical providers that provide health care services on
18 a noncapitated basis in the geographic region in which the services
19 were rendered.

20 (b) If an enrollee or insured received health care services on a
21 capitated basis and on a noncapitated basis, and the licensee,
22 medical group, or independent practice association that provided
23 the health care services on the capitated basis paid for the health
24 care services the enrollee received on the noncapitated basis, then
25 a lien that is subject to subdivision (a) may not exceed the sum of
26 the reasonable costs actually paid to perfect the lien, and the
27 amounts determined pursuant to both paragraphs (1) and (2) of
28 subdivision (a).

29 (c) If the enrollee or insured engaged an attorney, then the lien
30 subject to subdivision (a) may not exceed the lesser of the
31 following amounts:

32 (1) The maximum amount determined pursuant to subdivision
33 (a) or (b), whichever is applicable.

34 (2) One-third of the moneys due to the enrollee or insured
35 under any final judgment, compromise, or settlement agreement.

36 (d) If the enrollee or insured did not engage an attorney, then
37 the lien subject to subdivision (a) may not exceed the lesser of the
38 following amounts:

39 (1) The maximum amount determined pursuant to subdivision
40 (a) or (b), whichever is applicable.

1 (2) One-half of the moneys due to the enrollee or insured under
2 any final judgment, compromise, or settlement agreement.

3 (e) Where a final judgment includes a special finding by a
4 judge, jury, or arbitrator, that the enrollee or insured was partially
5 at fault, the lien subject to subdivision (a) or (b) shall be reduced
6 by the same comparative fault percentage by which the enrollee or
7 insured's recovery was reduced.

8 (f) A lien subject to subdivision (a) or (b) is subject to pro rata
9 reduction, commensurate with the enrollee's or insured's
10 reasonable attorney's fees and costs, in accordance with the
11 common fund doctrine.

12 (g) This section is not applicable to any of the following:

13 (1) A lien made against a workers' compensation claim.

14 (2) A lien for Medi-Cal benefits pursuant to Article 3.5
15 (commencing with Section 14124.70) of Chapter 7 of Part 3 of
16 Division 9 of the Welfare and Institutions Code.

17 (3) A lien for hospital services pursuant to Chapter 4
18 (commencing with Section 3045.1).

19 (h) This section does not create any lien right that does not exist
20 at law, and does not make a lien that arises out of an employee
21 benefit plan or fund enforceable if preempted by federal law.

22 (i) The provisions of this section may not be admitted into
23 evidence nor given in any instruction in any civil action or
24 proceeding between an enrollee or insured and a third party.

